IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3453 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI ALIAS MASALO HIMATLAL SHAH

Versus

STATE OF GUJARAT, 3RD SPECIAL LAND ACQUISITION

Appearance:

MR AR GUPTA for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 13-3-2000 passed by the District Magistrate, Vadodara and hehahas been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation to the authority on 15-4-2000 which has been received by the authority on 24-4-2000 and according to him, there is a delay. Learned APP has fairly admitted the same.

4. In the instant case, it appears that though representation has been sent on 15-4-2000, same has remained undecided till 24-4-2000. So, there is a delay of nine days in deciding the representation. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, no explanation has been putforward by the authority explaining satisfactorily the delay caused in this case. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal. Therefore, in view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 13-3-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Vallabhbhai @ Masalo Himatlal Shah is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no

order as to costs.

(R.P.DHOLAKIA,J.)

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